

THE HONORABLE ROBERT LASNIK

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MIKE KREIDLER, Insurance Commissioner for  
the State of Washington and as Receiver for  
Cascade National Insurance Company, in  
Liquidation,

Plaintiff,

v.

DANNY L. PIXLER and ROXANN PIXLER,  
individually and their marital community;  
ANTHONY HUFF and SHERI HUFF, individually  
and their marital community; AMERICAN  
STAFF RESOURCES OF CALIFORNIA, INC., a  
Delaware corporation; CERTIFIED SERVICES,  
INC., a Nevada corporation; MIDWEST  
MERGER MANAGEMENT, LLC, a Kentucky  
Limited Liability Company; and JOHN DOES 1  
– 10,

Defendants.

NO. C06-697 RSL

PLAINTIFF'S MOTION FOR  
RECONSIDERATION, OR IN THE  
ALTERNATIVE CLARIFICATION, OF THE  
COURT'S ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S MOTION *IN*  
*LIMINE* RE ALLEGATIONS OF RECEIVER'S  
COMPLAINT AGAINST ANDERSON

Noted on Motion Calendar:  
April 20, 2010

ORAL ARGUMENT REQUESTED

Pursuant to Local CR 7(h), plaintiff moves for reconsideration of the Court's April  
15, 2010 Order Granting in Part and Denying in Part Plaintiff's Motion *in Limine* (Dkt.  
265) with respect to defendants' proposed evidence, including the Complaint, of  
allegations Plaintiff made against Harold Anderson in an earlier lawsuit. (Dkt. 265, § D at

PLAINTIFF'S MOTION FOR RECONSIDERATION 1  
(C06-697 RSL)  
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7). Alternatively, Plaintiff seeks clarification from the Court concerning the admissibility of the full Complaint, given the number of other allegations and statements therein. If the Complaint is admissible under the Court's Order, plaintiff seeks to limit that exhibit to only those specific portions which relate to what Harold Anderson may have known or had reason to know regarding those matters which plaintiff claims in this suit that defendants failed to disclose to Harold Anderson.

# I. ARGUMENT AND AUTHORITY

## A. The Court Should Reconsider Its April 15, 2010 Order on the Anderson Complaint.

On April 15, 2010, this Court denied Plaintiff's motion *in limine* to bar Defendants from introducing evidence that the Receiver brought suit against Anderson and settled the matter. The Court ruled in relevant part the following:

[D]efendants seek to introduce the complaint plaintiff filed against Anderson as a statement against interest. On that basis, the complaint is admissible under Federal Rule of Evidence 801(d)(2). It represents an admission that at least at one point, plaintiff believed that Anderson was aware of the facts that defendants allegedly misrepresented or failed to disclose. Accordingly, the complaint is relevant and admissible.<sup>1</sup>

Defendants had argued to the Court that the Receiver alleged that Anderson knew Anthony Huff was a convicted felon, had his insurance license revoked, was an owner of and controlled Midwest Merger Management, and the other matters that the Receiver claims were failures to disclose or misrepresentations by defendants to Anderson. However, the Complaint in the action against Anderson, which is attached as Appendix 1 hereto, claimed causes of action for negligence and breach of fiduciary duty — i.e., that

<sup>1</sup> Dkt. 265, § D at 7 (emphasis added).

Anderson breached his duty to Cascade National because Anderson *knew or should have known* of the Defendants' misrepresentations.<sup>2</sup> Specifically, the allegations in that Complaint state that "Anderson overlooked, ignored, downplayed, or disregarded adverse information about Pixler and his associates or agents . . . ." <sup>3</sup> and that "[w]ith respect to the acts and omissions alleged herein, Anderson refused, disregarded, neglected to obtain, and/or acted contrary to, the recommendations and advice of senior management of Cascade National and/or legal counsel."<sup>4</sup> The Complaint does not allege that Anderson *knew* contrary to what Defendants argued to the Court, which may have misled the Court in making its decision.

The Complaint does not, therefore, rise to the level of an admission by Plaintiff that at one point the Receiver believed that Anderson *knew* of the facts that are claimed to be misrepresentations by Defendants. This Complaint is not an admission of fact that Plaintiff stated that Anderson "knew" or "was aware" of these misrepresentations. FED. R. EVID. 801(d)(2). To permit the use of the allegations to show and argue that Plaintiff once claimed that Anderson "knew" would be misleading and confusing to the jury – and could easily be misused, requiring more testimony by the Receiver, prolonging this trial.

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<sup>2</sup> See, e.g., *Simonetta v. Viad Corp.*, 165 Wn.2d 341, 370 n.5, 197 P.3d 127 (2008) (negligence considers the defendant's conduct by asking what it knew or should have known about hazards involved in the use of its product); *Bullard v. Bailey*, 91 Wn. App. 750, 758–59, 959 P.2d 1122 (1998) (attorney knew or should have known nonattorney regularly engaged in unlawful practice of law, client believed nonattorney lawfully represented him, nonattorney had financial difficulties, and thus, attorney should have expected client would suffer some harm at nonattorney's hands); *Henningsen v. Worldcom, Inc.*, 102 Wn. App. 828, 836, 9 P.3d 948 (2000) (employer subject to negligence in failing to stop discrimination when it knew or should have known that employees were being subjected to a hostile work environment).

<sup>3</sup> Appendix 1 (Complaint for Damages in *Kreidler v. Anderson*, King County Superior Court Cause No. 06-2-34413-8 SEA) at ¶ 3.8.

<sup>4</sup> *Id.* at ¶ 3.14.

1 If permitted, Plaintiff requests that the Court prohibit Defendants from stating to  
 2 the jury that Plaintiff claimed at one point, or alleged in the Complaint, that Anderson  
 3 actually *knew* of Defendants' misrepresentations.

4 Further, any use of the Complaint as an Exhibit at trial to show that Plaintiff  
 5 alleged that Anderson knew of Defendants' misrepresentations would be confusing,  
 6 misleading, and unduly prejudicial. FED. R. EVID. 403.

7  
 8 **B. In the Alternative, if the Complaint is Admissible, the Court Should Only Permit a**  
 9 **Redacted Version of the Complaint as an Exhibit Consistent with FRE 401, 402,**  
 10 **and 403, and Provide a Limiting Instruction to the Jury.**

11 Plaintiff requests that if the allegations of the Anderson action are permitted, the  
 12 Court should limit admissibility to the pertinent portions of the Complaint – to only those  
 13 portions of the Complaint which include the actual alleged statement. The Complaint  
 14 includes detailed, multiple allegations concerning other parties and events that are no  
 15 longer part of this case which have been ruled inadmissible in this case – (e.g, stock  
 16 purchase transaction, third-party complaint, various affirmative defenses). As such, the  
 17 full Complaint would be confusing and waste the jury's time, and could result in  
 18 consideration by the jury of irrelevant and extraneous matters not properly before it, if the  
 19 Complaint as an exhibit is permitted, plaintiff requests it be redacted – to permit only the  
 20 Caption and paragraph 3.8. FED. R. EVID. 401, 402, 403. A proposed redacted complaint  
 21 is attached as Appendix 2.<sup>5</sup>

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 26 <sup>5</sup> Appendix 2 (Proposed redacted Complaint for Damages in *Kreidler v. Anderson*, King County Superior Court Cause No. 06-2-34413-8 SEA).

II. CONCLUSION

Based on the foregoing, Plaintiff requests that the Court reconsider its ruling and exclude the Complaint against Anderson and any evidence regarding it. In the alternative, and for purposes of clarification, Plaintiff requests that the Court redact the irrelevant portions of the Complaint and limit any evidence or statements by the defense to the Complaint's Caption and paragraph 3.8.

Dated this 20<sup>th</sup> day of April 2010.

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